



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

FCP/150395

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milw Cty Dept Family Care - MCO in regard to Medical Assistance (MA), a rehearing was held on November 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the MCO correctly determined petitioner's supportive home care (SHC)/personal care (PC) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lori Stahl

Milw Cty Dept Family Care - MCO
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and a member of the Family Care Program (FCP).
2. On May 30, 2013 the Family Care Interdisciplinary Team (IDT) completed a 6-month review of petitioner's case, including a SHC/PC assessment.

3. On June 21, 2013 a Notice of Action letter was issued to petitioner regarding the determination that her SHC and PC hours would be 10.25 hours weekly (8.50 PC hours + 1.75 SHC hours).
4. Petitioner appealed that determination on July 1, 2013 and the matter was scheduled for a hearing. Several reschedules of that hearing occurred.
5. On October 2, 2013 petitioner received a functional occupational therapy (OT) assessment. This caused the IDT to increase petitioner's PC hours to 16.75 weekly and the SHC hours increased to 2 hours weekly, for a total of 18.75 hours weekly.
6. On October 7, 2013 the petitioner's authorized representative submitted a withdrawal for the hearing on petitioner's behalf citing the resolution that occurred after the OT assessment. The matter was dismissed accordingly.
7. On October 21, 2013 the petitioner filed a rehearing request stating that she did not intend to withdraw the matter. The matter was scheduled for a rehearing, which occurred on November 21, 2013.

DISCUSSION

The Family Care Program (FCP), which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. The Care Management Organization (CMO) is required to issue notice to clients regarding eligibility, entitlement and cost sharing requirements as required under Wis. Adm. Code §DHS 10.31(6)(b) and Wis. Adm. Code §DHS 10.52. Further, according to the rule, clients shall be given written notice of any intended adverse action at least 10 days prior to the date of the intended action by the CMO in every instance in which the CMO intends to reduce or terminate a service or deny payment for a service. As described in Finding #3 above, the notice was issued and petitioner appealed therefrom.

The state code language on the scope of permissible services for the FCP reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Admin. Code §DHS 10.41(2). SHC and PC services are included in the list of covered services in the statutory note above. The question that remains is, how many SHC and PC hours are essential to meeting the petitioner's needs?

The agency has developed an assessment tool to allow case managers to consistently determine the number of hours required by each recipient. The assessment tool allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool's calculations. The reviewer in this case, after several meetings with petitioner and assessing her capabilities, used the tool to determine the number of hours per week that were warranted both at the time of the 6-month review and after the OT assessment. The information provided at the assessments showed that petitioner warranted assistance in a variety of SHC and PC tasks. The testimony provided at hearing by petitioner and her husband now suggests however that the information was either

incorrectly entered or that petitioner's needs are far greater than they reported. The problem with the petitioner's information at hearing was that it did not credibly address that the information assessed by the IDT and the occupational therapist was somehow wrong. The petitioner's husband clearly wants the best for her, however, if her conditions have deteriorated to the point that he described at hearing the IDT must be made aware of it so that it can be assessed. All of her medications and medical conditions must also be provided to the IDT. Further, his testimony about wanting petitioner's caregiver, their daughter, to have more hours so as to have a livable wage did not help the credibility of his statements. I also reiterate the agency's policy statement about family members and compensation: the FCP will not pay for services that a family of a FCP member would typically provide for another family member as a matter of course in the usual relationship among family members. See Exhibit 6. Specifically, that Guideline states that "services that are typically assumed to be the responsibility of family members are routine laundry, meal preparation, shopping, usual cleaning, general/non-medical supervision, assisting with mobility, companionship, and transportation/escorting." The IDT will also not pay for duplicate services, so the hours awarded between petitioner and her husband also considered the live-in caregiver to the husband (another daughter).

In sum, the information presented at hearing by the petitioner and her husband should be presented to the IDT through another assessment so that the IDT can truly understand and evaluate what services petitioner needs. I must find that the preponderance of the evidence supports the agency's findings. Beyond the two assessments made by the IDT, there are the, presumably, objective findings from the OT evaluation. I have no reason to believe the OT would make up information about the petitioner's conditions and the IDT can only make determinations on the information it is receiving. Petitioner can always request a new assessment. The agency may want to consider recording such assessments given the questionable accuracy of information at the time of the assessments.

Based on the preponderance of the evidence, I conclude that the result of the SHC/PC determination is justified and I do not find reason to increase the hours beyond the hours now approved. This is not to diminish the services petitioner needs and receives; however, I cannot find that the agency made an incorrect determination based on the information provided to it at the time of the assessments.

CONCLUSIONS OF LAW

The MCO correctly determined petitioner's 2 SHC hours and 16.75 PC hours, for a total of 18.75 hours weekly.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of December, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 9, 2013.

Milw Cty Dept Family Care - MCO
Office of Family Care Expansion